IN THE UNITED STATES DISTRICT COURT
FOR THE SOURTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

AIX SPECIALITY INSURANCE COMPANY,	§	
	§	
	§	
Plaintiff,	§	
	§	
vs.	§	Civil Action No. 4:14-cv-2645
	§	
BBL INVESTMENTS, INC. ET AL.,	§	
	§	
Defendants.	§	Jury Trial Demanded
	§	

DEFENDANT RANDY A. MORENO'S ANSWER AND COUNTER-CLAIM

Defendant and Counter-Plaintiff Randy A. Moreno ("Moreno") respectfully files his Answer and Counter-Claim to Plaintiff AIX Specialty Insurance Company's Original Complaint. In support of, Moreno respectfully states:

I. ANSWER

As required by the Federal Rules of Civil Procedure, Plaintiff's allegations are made in consecutively numbered paragraphs. In answering each of the separately numbered paragraphs of the Complaint, Moreno has not responded to the headings. To the extent any response is necessary to these headings, the allegations contained in the headings are denied. All facts or assertions not expressly admitted are hereby denied, even when the responses below indicate Moreno lacks sufficient information to admit or deny the allegations. Moreno reserves his right to amend these answers after discovery of relevant information.

1. Admitted.

2. Admitted.

3. Admitted.

4. Admitted.

5. Admitted.

6. Admitted.

7. Admitted.

8. Admitted.

9. Admitted.

10. Admitted.

11. Admitted.

12. Admitted.

13. Admitted.

14. Admitted.

15. Admitted.

16. Admitted.

17. Admitted.

18. Admitted.

19. Moreno lacks sufficient information to admit or deny the allegations contained in this paragraph. Therefore, the allegations are denied.

20. Moreno lacks sufficient information to admit or deny the allegations contained in this paragraph. Therefore, the allegations are denied.

21. Moreno lacks sufficient information to admit or deny the allegations contained in this paragraph. Therefore, the allegations are denied.

22. Moreno lacks sufficient information to admit or deny the allegations contained in this paragraph. Therefore, the allegations are denied.

23. Moreno lacks sufficient information to admit or deny the allegations contained in this paragraph. Therefore, the allegations are denied.

24. Moreno lacks sufficient information to admit or deny the allegations contained in this paragraph. Therefore, the allegations are denied.

25. Moreno lacks sufficient information to admit or deny the allegations contained in this paragraph.

26. Moreno lacks sufficient information to admit or deny the allegations contained in this paragraph. Therefore, the allegations are denied.

27. Moreno lacks sufficient information to admit or deny the allegations contained in this paragraph. Therefore, the allegations are denied.

28. Moreno lacks sufficient information to admit or deny the allegations contained in this paragraph.

29. Moreno admits that criminal activity occurred at the Oakwood Villa Apartments less than one year before the armed robbery that is the subject of Moreno's state court lawsuit, and there was news coverage of some of those crimes. Moreno lacks sufficient information to admit or deny the remaining allegations contained in this paragraph. Therefore, those allegations are denied.

30. Moreno lacks sufficient information to admit or deny the allegations contained in this paragraph. Furthermore, this paragraph asks for a legal conclusion, to which no responsive pleading is required. To the extent one is required, it is denied.

31. Admitted.

32. This paragraph does not require a responsive pleading.

33. This paragraph asks for a legal conclusion, to which no responsive pleading is required. To the extent one is required, it is denied.

34. This paragraph asks for a legal conclusion, to which no responsive pleading is required. To the extent one is required, it is denied.

35. This paragraph asks for a legal conclusion, to which no responsive pleading is required. To the extent one is required, it is denied.

36. This paragraph asks for a legal conclusion, to which no responsive pleading is required. To the extent one is required, it is denied.

37. This paragraph asks for a legal conclusion, to which no responsive pleading is required. To the extent one is required, it is denied.

38. This paragraph does not require a responsive pleading.

39. This paragraph asks for a legal conclusion, to which no responsive pleading is required. To the extent one is required, it is denied.

40. This paragraph asks for a legal conclusion, to which no responsive pleading is required. To the extent one is required, it is denied.

41. This paragraph asks for a legal conclusion, to which no responsive pleading is required. To the extent one is required, it is denied.

42. This paragraph asks for a legal conclusion, to which no responsive pleading is required. To the extent one is required, it is denied.

"Prayer": This paragraph asks for a legal conclusion, to which no responsive pleading is required. To the extent one is required, it is denied.

II. Affirmative Defenses and Other Defensive Matters

Pleading further, if necessary, Moreno asserts the following affirmative and other defenses, without conceding that Moreno bears the burden of proof for the matters set forth herein, some of which seek affirmative relief while others are defensive in nature.

43. AIX's claims are barred because of the doctrine of unclean hands.

44. AIX is subject to the defense of estoppel and waiver.

III. Counter-Claims

Procedural Pleadings

45. Defendant and Counter-Plaintiff is Randy A. Moreno.

46. Plaintiff and Counter-Defendant is AIX Specialty Insurance Company. AIX has appeared and subjected itself to this Court's jurisdiction by seeking affirmative relief.

47. Under 28 U.S.C. § 1367, this Court may exercise supplemental jurisdiction over Moreno's counter-claims.

48. All conditions to recovery have been performed or have occurred.

Factual Background

49. The following facts are taken from the Original Petition in the lawsuit styled *Randy A. Moreno v. Ras Apartments, LLC d/b/a Oaks Wood Villa Apartments*, In the 113th Judicial District Court, Texas, Cause No. 2014-54542 (the "Underlying Lawsuit").

50. On or about February 2, 2014, Moreno was watching the Super Bowl in his apartment at the Oakwood Villas Apartment, located at 6201 West Bellfort Street, Houston, Texas, when three men barged into the apartment, with guns in hand. They demand money from Moreno and his guest. The intruders then fired multiple shots, striking Moreno, who suffered serious injuries his to stomach and knee.

51. At the time of the incident, the owners of Oakwood Villas Apartments failed to provide adequate security against criminal conduct. The lighting in general was inadequate. The lighting outside of Moreno's apartment door was inoperable, even though management was on notice of this, but ignored the importance of having well-lit hallways and walk-ways. The lack of lighting is open and obvious and any reasonable apartment complex owner would not allow such a condition to exist; especially a condition which is vital and to the safety of the residents, guests, and other invitees to the property.

52. At the time of the incident, insufficient and/or ineffective security personnel were present on the property. The Oakwood Villa Apartment had had a high number of burglaries of motor vehicles, robberies, shootings, murders, assaults and other violent crimes occur either on its premises or its surrounding neighborhoods. This should have put any reasonable owner of an apartment complex on notice that sufficient security measures needed to be in place and that all such measures were operating correcting, such as insuring the property was not easily accessible by third parties due to an inoperable exit gate.

53. Plaintiff AIX insured Ras Apartments, LLC, the owners of the Oakwood Villa Apartments and a defendant in this lawsuit, under primary and excess policies and now seeks a declaration that it does not owe coverage for any liability in the Underlying Lawsuit.

Declaratory Judgment

54. Moreno brings this request for declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202 and Federal Rule of Civil Procedure 57.

55. Moreno seeks a declaratory judgment that Ras Apartments, LLC's liability to Moreno, arising from the Underlying Lawsuit and the facts alleged therein, is covered by Ras Apartments, LLC's commercial liability insurance policy with AIX.

***Conditional* Breach of Contract or Anticipatory Breach Claim**

56. The Underlying Lawsuit was recently filed. Should Moreno succeed in the Underlying Lawsuit, Moreno would have standing as a third-party beneficiary under the contract between AIX and Ras Apartments, LLC. Accordingly, and subject to Moreno's reservation of his right to file a Motion to Stay this litigation pending the resolution of the Underlying Lawsuit, Moreno claims recovery against AIX as a third-party beneficiary.

57. Moreno is a third-party beneficiary to the contract between AIX and Ras Apartments, LLC. AIX and Ras Apartments, LLC intended to secure a benefit to Moreno. Further, AIX and Ras Apartments, LLC entered into the contract directly for Moreno's benefit.

58. A contract existed between AIX and Ras Apartments, LLC. Under the terms of the contract, AIX would cover Ras Apartments, LLC's liability for damages. Ras Apartments, LLC performed its obligations under the contract by paying the premiums on its commercial liability insurance. AIX is seeking to breach the contract by refusing to cover Ras Apartments, LLC's liability as may be made definite by the final judgment in the Underlying Lawsuit. Alternatively, AIX has filed this lawsuit attempting to discharge its obligations under its insurance contact with Ras Apartments, LLC, thereby anticipatorily repudiating its contract with Ras Apartments, LLC. The breach has or will cause damages to Moreno.

Attorneys' Fees

59. As a result of AIX's breach or anticipator breach, Moreno has and will continue to incur attorneys' fees, which she is seeking pursuant to TEX. CIV. PRAC. & REM. CODE Section 38.001 and under law and equity.

Demand for Jury Trial

60. Pursuant to the U.S. Const. amend. 7 and Federal Rule of Civil Procedure 38,

Defendant Moreno hereby demands a trial by jury on all issues of fact.

Prayer

61. Therefore, Moreno asks for judgment and a declaration against AIX for the following:

a. A declaration that defendant Ras Apartment, LLC's liability to Moreno, arising from the Underlying Lawsuit, is covered by Ras Apartment LLC's's commercial liability insurance policy with AIX;

b. Monetary damages resulting from AIX's breach of the insurance contact;

c. Reasonable attorneys' fees;

d. Pre-judgment and post-judgment interest;

e. Costs of suit; and

f. All other relief the Court deems appropriate.

DATED: November 17, 2014.

By: */s/ Mo Taherzadeh*

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Counsel for Defendant and Counter-Plaintiff
Randy A. Moreno

CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2014**,** a true and correct copy of the foregoing instrument was served upon all counsel of record via the Court's ECF system.

/s/ Mo Taherzadeh
Mo Taherzadeh